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10 Attorneys for Defendant  
11 Asset Acceptance, LLC

12 UNITED STATES DISTRICT COURT  
13  
14 NORTHERN DISTRICT OF CALIFORNIA  
15  
16 SAN FRANCISCO DIVISION  
17

18 ROBERT MICHAEL WILLIAMS,

19 Plaintiff,

20 vs.

21 TRANS UNION LLC, EXPERIAN  
22 INFORMATION SOLUTIONS,  
23 INC.; EQUIFAX INFORMATION  
24 SERVICES, LLC; AMERICAN  
25 EXPRESS TRAVEL RELATED  
26 SERVICES; DISCOVERY  
27 FINANCIAL SERVICES;  
28 PINNACLE CREDIT SERVICES,  
INC.; ASSET ACCEPTANCE, LLC;  
and NATIONAL CREDIT  
ADJUSTERS, LLC

Defendants.

CASE NO.: 3:07-CV-05956 CRB

**ANSWER OF DEFENDANT ASSET  
ACCEPTANCE, LLC TO COMPLAINT**

1 Defendant ASSET ACCEPTANCE, LLC (“Defendant”) hereby submits the  
2 following Answer to the Complaint filed in this action by plaintiff ROBERT  
3 MICHAEL WILLIAMS (“Plaintiff”):

4 1. In answering Paragraph 1 of the Complaint, Defendant admits that Plaintiff  
5 purports to bring this action pursuant to the Fair Credit Reporting Act, 15 U.S.C. §  
6 1681 *et seq.* (“FCRA”), the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et*  
7 *seq.*, and California Civil Code § 1798.92. Defendant further admits that Plaintiff  
8 alleges that this Court has jurisdiction pursuant to 15 U.S.C. § 1681p and supplemental  
9 jurisdiction for Plaintiff’s state law claims pursuant to 15 U.S.C. § 1367. Except as  
10 herein admitted, the remaining allegations of Paragraph 1 are denied.

11 2. Defendant lacks sufficient knowledge to form a belief as to the allegations  
12 of Paragraph 2 of the Complaint and on that basis, denies them.

13 3. Defendant lacks sufficient knowledge to form a belief as to the allegations  
14 of Paragraph 3 of the Complaint and on that basis, denies them.

15 4. Denied.<sup>1</sup>

16 5. Denied.

17 6. In answering Paragraph 6 of the Complaint, Defendant admits on  
18 information and belief that Plaintiff is a “consumer” as defined by the Fair Credit  
19 Reporting Act, 15 U.S.C. § 1681a(c) and that Plaintiff is a resident of Dublin,  
20 California. Except as herein admitted, the remaining allegations of Paragraph 6 are  
21 denied.

22 7. Defendant admits, on information and belief, the allegations of Paragraph  
23 7 of the Complaint.

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25  
26 <sup>1</sup>Where Plaintiff has made allegations as to more than one defendant generally,  
27 defendant Asset Acceptance, LLC has responded only on its own behalf as it lacks  
28 sufficient knowledge to form a belief as to the conduct of the other defendants in this  
action.

1           8. Defendant admits, on information and belief, the allegations of Paragraph  
2 8 of the Complaint.

3           9. Defendant admits, on information and belief, the allegations of Paragraph  
4 9 of the Complaint.

5           10. Defendant admits, on information and belief, the allegations of Paragraph  
6 10 of the Complaint.

7           11. Defendant admits, on information and belief, the allegations of Paragraph  
8 11 of the Complaint.

9           12. Defendant admits, on information and belief, the allegations of Paragraph  
10 12 of the Complaint.

11           13. In answering Paragraph 13 of the Complaint, Defendant admits that it is a  
12 Delaware limited liability company that has, at times, acted as a “debt collector” as  
13 defined by 15 U.S.C. § 1692a(6) and that it has, at times, purchased charged-off  
14 receivables from banks. Except as herein admitted, the remaining allegations of  
15 Paragraph 13 are denied.

16           14. Defendant lacks sufficient knowledge to form a belief as to the allegations  
17 of Paragraph 14 of the Complaint and on that basis, denies them.

18           15. Defendant lacks sufficient knowledge to form a belief as to the allegations  
19 of Paragraph 14 of the Complaint and on that basis, denies them.

20           16. Defendant incorporates by reference paragraphs 1 through 15 above as if  
21 fully stated herein.

22           17. Defendant avers that no response to Paragraph 17 is required of it.

23           18. Defendant avers that no response to Paragraph 18 is required of it.

24           19. Defendant avers that no response to Paragraph 19 is required of it.

25           20. Defendant avers that no response to Paragraph 20 is required of it.

26           21. Defendant avers that no response to Paragraph 21 is required of it.

27           22. Defendant avers that no response to Paragraph 22 is required of it.

28           23. Defendant avers that no response to Paragraph 23 is required of it.

1       24. Defendant avers that no response to Paragraph 24 is required of it.

2       25. Defendant avers that no response to Paragraph 25 is required of it.

3       26. Defendant incorporates by reference paragraphs 1 through 15 above as if  
4 fully stated herein.

5       27. In answering Paragraph 27 of the Complaint, Defendant avers that the  
6 contents of the FCRA, 15 U.S.C. § 1681 *et seq.* are self-explanatory. Except as herein  
7 admitted, the remaining allegations of Paragraph 27 are denied.

8       28. Denied.

9       29. Defendant admits, on information and belief, the allegations of Paragraph  
10 29 of the Complaint.

11       30. Admitted.

12       31. In answering Paragraph 31 of the Complaint, Defendant admits that it  
13 received Automated Credit Dispute Verification forms via E-Oscar from Equifax  
14 Information Services, Inc., Experian Information Solutions, Inc. and Trans Union, LLC  
15 related to certain of Plaintiff's accounts owned by Defendant. Except as herein  
16 admitted, the remaining allegations of Paragraph 31 are denied.

17       32. Denied.

18       33. Denied.

19       34. In answering Paragraph 34 of the Complaint, Defendant denies that there  
20 are any grounds for the recovery of punitive damages by Plaintiff in this action.

21       35. In answering Paragraph 35 of the Complaint, Defendant denies that there  
22 are any grounds for the recovery of costs and attorneys' fees by Plaintiff in this action.

23       36. Defendant incorporates by reference paragraphs 1 through 15 above as if  
24 fully stated herein.

25       37. In answering Paragraph 37 of the Complaint, Defendant admits that it has,  
26 at times, acted as a "debt collector" as defined by 15 U.S.C. § 1692a(6) and that it has  
27 conducted interstate business with residents of California using the mail and telephone.  
28 Except as herein admitted, the remaining allegations of Paragraph 37 are denied.

1       38. In answering Paragraph 38 of the Complaint, Defendant admits that it has,  
2 at times, acted as a “debt collector” as defined by 15 U.S.C. § 1692a(6). Except as  
3 herein admitted, the remaining allegations of Paragraph 38 are denied.

4       39. In answering Paragraph 39 of the Complaint, Defendant admits that it  
5 received a letter from Plaintiff dated September 11, 2007, the contents of which are  
6 self-explanatory. Except as herein admitted, the remaining allegations of Paragraph 39  
7 are denied.

8       40. Denied.

9       41. Denied.

10       42. Denied.

11       43. Defendant lacks sufficient knowledge to form a belief as to the allegations  
12 of Paragraph 43 of the Complaint and on that basis, denies them.

13       44. Defendant lacks sufficient knowledge to form a belief as to the allegations  
14 of Paragraph 44 of the Complaint and on that basis, denies them.

15       45. In answering Paragraph 45 of the Complaint, Defendant admits that it  
16 received a letter from Plaintiff dated September 11, 2007, the contents of which are  
17 self-explanatory. Except as herein admitted, the remaining allegations of Paragraph 45  
18 are denied.

19       46. Denied.

20       47. In answering Paragraph 47 of the Complaint, Defendant denies that  
21 Plaintiff properly advised Defendant of the alleged identity theft consistent with the  
22 requirements of Cal. Civ. Code § 1798.93. Defendant denies the remaining allegations  
23 of Paragraph 47 of the Complaint.

24       48. Denied.

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**AFFIRMATIVE DEFENSES**

As and for separate affirmative defenses to the Complaint, Defendant alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

The allegations of the Complaint fail to state a claim against Defendant upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Statute of Limitations/Laches)**

The purported claims set forth in the Complaint are barred in whole or in part by the applicable statutes of limitation and/or the equitable doctrine of laches.

**THIRD AFFIRMATIVE DEFENSE**

**(Bona Fide Error)**

To the extent that any violation of law occurred, which Defendant expressly denies, said violation was not intentional and resulted from a bona fide error notwithstanding the maintenance by Defendant of procedures reasonably adapted to avoid any such error.

**FOURTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

The allegations in the Complaint and relief requested are on information and belief barred in whole or in part by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

**(No Wilful Conduct)**

Defendant acted in good faith at all times in its dealings with Plaintiff, and if any conduct by Defendant is found to be unlawful, which Defendant expressly denies, such conduct was not willful and should not give rise to liability.

**SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

Plaintiff, although under a legal obligation to do so, has failed to take reasonable steps to mitigate any alleged damages that he may have and is therefore barred from recovering damages, if any, from Defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Waiver)**

Plaintiff has waived his rights, if any, to recover the relief he seeks in the Complaint based upon his own conduct and admissions with respect to the account at issue.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Good Faith)**

Defendant has, at all material times with respect to Plaintiff, acted in good faith in an effort to comply fully with all relevant federal and state laws.

**NINTH AFFIRMATIVE DEFENSE**

**(Apportionment)**

Without admitting that any damages exist, if damages were suffered by Plaintiff as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Defendant. The liability, if any exists, of all defendants and/or

1 any responsible parties, named or unnamed, should be apportioned according to their  
2 relative degrees of fault, and the liability of this Defendant should be reduced  
3 accordingly.

4  
5 **TENTH AFFIRMATIVE DEFENSE**  
6 **(Supervening Cause)**

7 The causes of action in the Complaint are barred, in whole or in part, to the  
8 extent that any injury or loss sustained was caused by intervening or supervening events  
9 over which Defendant had or has no control.

10  
11 **ELEVENTH AFFIRMATIVE DEFENSE**  
12 **(Equitable Indemnity)**

13 To the extent that Plaintiff has suffered any damage as a result of any alleged act  
14 or omission of Defendant, which Defendant denies, Defendant is entitled to equitable  
15 indemnity according to comparative fault from other persons and/or entities causing or  
16 contributing to such damages, if any.

17  
18 **TWELFTH AFFIRMATIVE DEFENSE**  
19 **(Setoff)**

20 To the extent that Plaintiff has suffered any damage as a result of any alleged act  
21 or omission of Defendant, which Defendants denies, Defendant is, on information and  
22 belief, entitled to a setoff in the amount Plaintiff owes on his unpaid accounts,  
23 including any recoverable interest and attorneys' fees.

24  
25 **THIRTEENTH AFFIRMATIVE DEFENSE**  
26 **(Standing)**

27 Plaintiff lacks standing to assert his claims against Defendant.  
28



**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Preemption)**

Plaintiff's claims under state law are barred in whole or in part by the doctrine of preemption.

WHEREFORE, Defendant requests judgment as follows:

1. That Plaintiff take nothing by the Complaint, which should be dismissed with prejudice.
2. That Defendant recover from Plaintiff costs according to proof.
3. That Defendant recover attorneys' fees according to proof.
4. That the Court orders such other further reasonable relief as the Court may deem just and proper.

DATED: February 22, 2008

SIMMONDS & NARITA LLP  
TOMIO B. NARITA  
JEFFREY A. TOPOR

By: s/Tomio B. Narita  
Tomio B. Narita  
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Asset Acceptance, LLC